

LEGISLATURE OF THE STATE OF IDAHO
Sixty-second Legislature Second Regular Session - 2014

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 546

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO THE IDAHO REIMBURSEMENT INCENTIVE ACT; AMENDING CHAPTER 47, TITLE 67, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 67-4737 THROUGH 67-4744, IDAHO CODE, TO PROVIDE A SHORT TITLE AND LEGISLATIVE INTENT, TO PROVIDE DEFINITIONS, TO PROVIDE FOR AN APPLICATION, APPLICATION PROCESS, FORMATION OF AGREEMENTS AND REIMBURSEMENT, TO PROVIDE FOR AGREEMENT WITH THE APPLICANT, TO PROVIDE FOR AN ANNUAL REPORTING PROCEDURE, TO REQUIRE AN ANNUAL REPORT TO THE LEGISLATURE BY THE DIRECTOR OF THE IDAHO DEPARTMENT OF COMMERCE AND TO PROVIDE FOR RULEMAKING AUTHORITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 47, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 67-4737 through 67-4744, Idaho Code, and to read as follows:

67-4737. IDAHO REIMBURSEMENT INCENTIVE ACT -- SHORT TITLE -- LEGISLATIVE INTENT. Sections 67-4737 through 67-4744, Idaho Code, shall be known and may be cited as the "Idaho Reimbursement Incentive Act." The Idaho legislature finds that in order to compete more effectively in a national and global marketplace for economic expansion, business retention and job creation, a number of states, including Idaho, have deemed it necessary to create economic-based incentives for the creation of quality jobs. Further, the Idaho legislature desires to create the Idaho reimbursement incentive act to be a performance-based tax reimbursement mechanism available to existing Idaho businesses and new businesses creating jobs in Idaho when the same are in good standing in the state of Idaho.

67-4738. DEFINITIONS. As used in sections 67-4737 through 67-4744, Idaho Code:

(1) "Applicant" means a business entity that intends to create new jobs and submits an application for reimbursement to the department in accordance with this act.

(2) "Application" means a form approved by the director of the department containing all information required by the provisions of this act.

(3) "Approved percentage" means the amount of new state revenue the applicant is entitled to receive in the form of a tax credit over the term of the project. The approved percentage shall not exceed thirty percent (30%) of the new state revenue over the term of the project.

(4) "Business entity" means a single business, a separate division, branch or identifiable segment, or a group of businesses related through ownership pursuant to section 267 of the Internal Revenue Code. For the purpose of this subsection, a "separate division, branch, or identifiable

1 segment" shall be deemed to exist if, prior to the date of application, the
 2 income and expense attributable to such "separate division, branch, or iden-
 3 tifiable segment" could be separately ascertained from the books of accounts
 4 and records.

5 (5) "Community match" means a commitment by the local government that
 6 demonstrates its active support of the applicant creating new jobs in its ju-
 7 risdiction. Such match may include, but shall not be limited to, a contri-
 8 bution of money, fee waivers, in-kind services, the provision of infrastruc-
 9 ture or a combination thereof. Such match shall also include a letter of com-
 10 mitment by the governing elected officials of the jurisdiction detailing the
 11 local government's support that shall be included as part of an application.

12 (6) "Council" means the economic advisory council created pursuant to
 13 chapter 47, title 67, Idaho Code.

14 (7) "Department" means the Idaho department of commerce.

15 (8) "Director" means the director of the Idaho department of commerce.

16 (9) "Full-time job" means a job in which an individual is employed by
 17 the applicant and performs such duties at least thirty (30) hours per week.

18 (10) "Meaningful project" means an expansion of an existing business
 19 located in Idaho or the creation of new business operations in Idaho that
 20 generate the minimum required new jobs and otherwise qualify under the pro-
 21 visions of this act.

22 (11) "Minimum new jobs" means new jobs created by the applicant that
 23 shall be not less than twenty (20) such jobs over the term of the project if
 24 created within a rural community, or not less than fifty (50) such jobs over
 25 the term of the project if created within an urban community. An applicant
 26 will not be eligible for tax credit during the term of the project until the
 27 minimum new jobs have been added.

28 (12) "New jobs" means new jobs created in Idaho in accordance with this
 29 act that are nonseasonal, full-time jobs that pay annual wages that equal or
 30 exceed the average annual county wage where the jobs will be created. For
 31 purposes of this act, a job that shifts from one (1) location within the state
 32 of Idaho to another location shall not be considered a new job. New jobs must
 33 exceed the applicant's maximum number of full-time jobs in Idaho during the
 34 twelve (12) months immediately preceding the date of application.

35 (13) "New state revenue" means the Idaho portion of state corporate in-
 36 come tax, personal income tax and sales and use tax that is paid by the appli-
 37 cant in excess of those taxes paid at the date of application and is attrib-
 38 utable only to the new growth upon which the application is based. New state
 39 revenue does not include taxes paid during the term that is attributable to
 40 those operations that existed prior to the application. New state revenue
 41 shall include:

42 (a) Incremental new state sales and use tax revenues as governed by
 43 chapter 36, title 63, Idaho Code, that have been paid by the applicant on
 44 their own purchases as a result of a meaningful project;

45 (b) Incremental new state income tax, including income tax generated by
 46 corporations, pass-through entities, as defined in section 63-3006C,
 47 Idaho Code, or proprietorships, pursuant to chapter 30, title 63, Idaho
 48 Code, that have been paid by an applicant as a result of a meaningful
 49 project;

(c) Incremental new state personal income taxes, as governed by chapter 30, title 63, Idaho Code, withheld on behalf of the applicant's employees, resulting from new jobs in a meaningful project, as evidenced by payroll withholding records indicating the amount of employee income taxes withheld and transmitted to the tax commission. Incremental new state personal income taxes shall not exceed the maximum allowable percentage of gross wages paid during a corresponding period that shall be the lesser of seven percent (7%) or the highest incremental state income tax rate.

(14) "Rural community" means, at the time of application, a city with a population of less than twenty-five thousand (25,000) persons or an unincorporated area within a county.

(15) "Tax commission" means the Idaho state tax commission.

(16) "Tax credit" means a refundable tax credit authorized by the director of the department. The tax commission shall make a refund to an applicant that is granted a tax credit under this section if the amount of the tax credit exceeds the applicant's tax liability for a taxable year. The credit may be used as a credit against the income or franchise tax contained in chapter 30, title 63, Idaho Code.

(17) "Tax credit amount" means the amount the department authorizes as a tax credit for a taxable year.

(18) "Term of project" or "term" means the number of years an applicant is authorized to receive a tax credit under this act that shall not exceed fifteen (15) years.

(19) "Urban community" means, at the time of application, a city with a population of at least twenty-five thousand (25,000), provided however, that a city of less than twenty-five thousand (25,000) that is adjoining an urban community shall be considered urban.

67-4739. APPLICATION -- PROCESS -- AGREEMENTS -- REIMBURSEMENT. (1) A business entity may claim a refundable tax credit for creating a minimum number of new jobs in the state of Idaho. In order to be considered for participation, an applicant or its designated representative must submit an application to the director and shall include:

(a) A complete description of the proposed project and the economic benefit that will accrue to the state as a result of the project;

(b) A description or explanation of whether the project will occur or how it will be altered if the tax credit application is denied by the council;

(c) Proof of a community match;

(d) An affidavit from the tax commission confirming that the applicant is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission;

(e) A detailed statement with an estimate of Idaho goods and services to be consumed or purchased by the applicant during the term;

(f) Known or expected detriments to the state or existing industries in the state;

(g) An anticipated project inception date and proposed schedule of progress;

(h) Proposed performance requirements and measurements that must be met prior to issuance of the tax credit;

(i) A detailed description of the proposed capital investment;

(j) A detailed description of jobs to be created, an approximation of the number of such jobs to be created and the projected wages to be paid for such jobs; and

(k) A detailed description of the estimated new state tax revenues to be generated by the project.

(2) Upon satisfaction by the director that all requirements are met pursuant to this chapter, the director shall submit such application to the council. The council shall review the application, may request additional information and shall approve or reject the application. An approval or rejection from the council will be final and conclusive and shall not constitute an appealable agency action or order under chapter 52, title 67, Idaho Code.

(3) If the council approves the application, the council shall instruct the director to enter into an agreement with the applicant with the terms of the council's approval. If the council rejects an application, the applicant may reapply with a new application.

(4) In the event a member of the council has a conflict of interest on an application that is before the council, the member shall fully disclose it to the council and abstain from any vote on the application.

67-4740. AGREEMENT WITH APPLICANT. (1) With instruction from the council, the director of the department shall enter into a reimbursement incentive agreement with the applicant, provided the agreement defines the following in addition to the terms as approved by the council:

(a) The term of the agreement which in no case shall exceed fifteen (15) years;

(b) The projected new state revenues to be generated during the term of the project;

(c) The method and recordkeeping requirements to be used by the applicant to determine the new state revenue paid by the applicant. The approved tax credit percentage applied to new state revenue each year the applicant is entitled to receive the reimbursement during the term of the project;

(d) The projected new jobs;

(e) The terms and conditions of any and all requirements and measurements that must be met prior to the issuance of a tax credit authorization;

(f) The agreed upon and necessary proof of compliance required prior to tax credit issuance. Proof of compliance provided by the applicant must be adequate to demonstrate to the director that all requirements and measurements have been met for the applicant to receive the tax credit;

(g) The consequences of default by the applicant;

(h) The period to be used to determine the taxes paid at the date of application;

(i) Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641 or

63-4408, Idaho Code, or is required to obtain a separate seller's permit pursuant to chapter 36, title 63, Idaho Code.

(j) The federal employer identification and social security number for each individual or entity included within the definition of business entity and that is included within the filing of the application; and

(k) Identification of the individual or entity that is or will be claiming the refundable credit.

67-4741. APPLICANT'S ANNUAL REPORTING PROCEDURE. (1) On an annual basis during the term of the project, the applicant shall submit to the department reporting information outlined in the agreement that shall include, but not be limited to, the following:

(a) Supporting documentation of the new state revenues from the applicant's new project that were paid during the preceding calendar year;

(b) Supporting documentation of the new jobs that were created during the preceding calendar year;

(c) Known or expected detriments to the state or existing industries in the state;

(d) A document that expressly directs and authorizes the tax commission and department of labor to allow the department access to the applicant's returns and other information that may be necessary to verify or otherwise confirm the declared new state revenues;

(e) An affidavit from the tax commission confirming that the applicant is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission;

(f) Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641 or 63-4408, Idaho Code, or is required to obtain a separate seller's permit pursuant to chapter 36, title 63, Idaho Code; and

(g) Supporting documentation that the business entity has satisfied the measurements and requirements outlined in the agreement.

(2) If, after review and audit of the information provided by the applicant, or after review of the ongoing performance of the applicant, the department determines that the information is inadequate to provide a reasonable justification for authorizing or continuing a tax credit, the department shall:

(a) Deny the tax credit for such tax year;

(b) Terminate the agreement for failure to meet the performance standards established in the agreement; or

(c) Inform the applicant that the returns or other information are inadequate and request the applicant to submit additional documentation.

(3) If, after review and/or audit of the information provided by the applicant, the department determines that the information provided by the applicant provides reasonable justification for authorizing a tax credit, the department shall, based upon the returns and other information:

(a) Determine the amount of the tax credit to be granted to the applicant;

(b) Issue a tax credit authorization to the applicant; and

1 (c) Provide a duplicate copy of the tax credit authorization to the tax
2 commission.

3 (4) No applicant may claim a tax credit unless the applicant has a tax
4 credit authorization issued by the department. An applicant may claim a tax
5 credit in the amount listed on the tax credit authorization on its tax re-
6 turn.

7 67-4742. ANNUAL REPORTING BY DEPARTMENT. (1) The department shall
8 create an annual written report for the governor and the legislature de-
9 scribing:

10 (a) The department's success under this act in attracting new jobs;

11 (b) The estimated amount of tax credit commitments made by the depart-
12 ment and the period of time over which tax credits will be paid;

13 (c) The economic impact on the state related to generating new state
14 revenue and providing tax credits under this act;

15 (d) The estimated costs and economic benefits of the tax credit commit-
16 ments that the department made; and

17 (e) The actual costs and economic benefits of the tax credit commit-
18 ments the department made.

19 (2) On or before November 1, 2015, and every year thereafter, the de-
20 partment shall:

21 (a) Conduct an independent, third-party audit of the tax credits issued
22 under this act;

23 (b) Evaluate the tax credits issued under this act and the effective-
24 ness of the tax credits; and

25 (c) Make recommendations concerning whether the tax credits should be
26 continued, modified or repealed.

27 (3) The audit as set forth herein shall include an evaluation of:

28 (a) The amount of tax credits granted; and

29 (b) The effectiveness of the department's internal controls within the
30 application and approval process pursuant to this chapter.

31 (4) The results of such audit and the director's recommendations shall
32 be forwarded in a timely manner to the office of the governor and to the ap-
33 propriate legislative committee chairmen.

34 67-4743. SUSPENSION OF IDAHO REIMBURSEMENT INCENTIVE ACT. (1) The di-
35 rector shall suspend the issuance of all new agreements with applicants upon
36 the occurrence of the following conditions:

37 (a) The governor orders a temporary reduction of general fund spending
38 authority, pursuant to section 67-3512A, Idaho Code; and

39 (b) The governor issues an executive order directing the department to
40 suspend the issuance of new agreements during the tax year in which the
41 temporary reduction of general fund spending authority has been ordered
42 and the executive order issued.

43 (2) Pursuant to this chapter, all agreements that have been approved by
44 the council prior to the governor issuing an executive order as provided by
45 subsection (1)(b) of this section shall remain in full force and effect and
46 shall not be modified or impaired as a result of the executive order.

47 (3) During the period of time that new agreements have been suspended,
48 the director shall maintain the necessary services required pursuant to this

1 chapter to support all existing agreements and comply with all required re-
2 porting and review responsibilities.

3 (4) The governor may, by executive order, remove the suspension issued
4 pursuant to subsection (1) (b) of this section.

5 67-4744. DIRECTOR RULEMAKING AUTHORITY. The director shall promul-
6 gate rules pursuant to chapter 52, title 67, Idaho Code, in the furtherance
7 of the objectives of this act.